

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

JL POWELL CLOTHING LLC and)	
JL POWELL LLC,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 2:13-cv-00160-NT
)	
JOSHUA L. POWELL,)	
<i>individually and doing business as</i>)	
THE FIELD, <i>doing business as</i>)	
FIELD OUTFITTING, <i>doing business</i>)	
<i>as</i> FIELD OUTFITTING COMPANY,)	
)	
Defendant.)	

ORDER ON REMAND

The First Circuit has remanded this case to me to address the irreparable injury component of my previous preliminary injunction order. For the reasons stated below, I find that the irreparable injury component has been satisfied and order that the preliminary injunction remain in place. I find that the Plaintiffs have also established their right to an injunction under their trademark infringement claim.

BACKGROUND

In January of 2014, I enjoined Joshua L. Powell (“**Defendant**” or “**Powell**”) “from using his name or endorsement in connection with his business venture The Field, and . . . directed [Defendant] to instruct other persons or entities using his name or endorsement in connection with The Field to cease any such use.” Order of

Jan. 30, 2014 at 39 (“**PI Order**”) (ECF No. 80).¹ Powell appealed that order pursuant to 28 U.S.C. § 1292(a)(1), which allows interlocutory appeals from orders granting preliminary injunctions. Br. of Appellant 1, *JL Powell Clothing LLC v. Powell*, No. 14-1242 (1st Cir. June 9, 2014) (“**Appellant Br.**”).²

While the First Circuit found no abuse of discretion in my analysis of the likelihood of success on the merits, balance of equities, or public interest, it did take issue with my reasoning on irreparable harm. *JL Powell Clothing LLC*, 2014 WL 5410287, at *3-6. I relied on the existence of a contractual provision stipulating to irreparable harm in the event of a breach, rather than making an independent factual finding based on the record. PI Order 29. The First Circuit declined to resolve “whether resting on a contractual provision of irreparable injury alone is error” and directed me to determine whether the record supports a finding of irreparable harm. *JL Powell Clothing LLC*, 2014 WL 5410287, at *5-6. In the event that I found irreparable harm, the First Circuit further directed me to revisit the scope of the injunction. *Id.* at *8, *9.

The Plaintiffs based their arguments for injunctive relief on both their contract claim and their trademark claims.³ Because I relied on the contractual provision, I

¹ The injunction also restricted JL Powell Clothing LLC “from using the Defendant’s signature in connection with its business.” PI Order 40.

² Powell also asked the First Circuit to consider whether this Court properly denied his motion to dismiss (ECF No. 58) under the appellate court’s authority to review that denial as part of the interlocutory appeal. Appellant Br. 1-2 (citing *First Medical Health Plan, Inc. v. Vega-Ramos*, 479 F.3d 46 (1st Cir. 2007)). The First Circuit declined Powell’s request and instead limited its review to the preliminary injunction. *JL Powell Clothing LLC v. Powell*, No. 14-1242, 2014 WL 5410287, at *2 (1st Cir. Oct. 24, 2014) (per curiam).

³ Plaintiffs’ Amended Complaint includes the following claims: dilution of a famous mark under the Federal Trademark Dilution Act, 15 U.S.C. § 1125(c) (Count I); likelihood of confusion under

made no “factual findings as to customer confusion.” *Id.* at *2. And, because I found that a preliminary injunction was supported based on the Plaintiffs’ contract claim, I considered a separate analysis under the Plaintiffs’ related trademark claim unnecessary. The issue of customer confusion, however, is at the heart of both the trademark infringement claim and the irreparable harm analysis under the contract claim. Accordingly, on remand, I analyze whether the Plaintiffs have established a right to injunctive relief under their trademark infringement claim before I address irreparable harm under the contract claim.⁴

After a complete review of the record, I find that the Plaintiffs have established that they are entitled to preliminary injunctive relief for the Defendant’s likely infringement of the “J.L. Powell” trademark, owned by JL Powell Clothing LLC. I further find that the Plaintiffs have demonstrated under their contract claim that they are likely to suffer irreparable harm resulting from Powell’s use of his name or endorsement in connection with The Field absent preliminary relief.⁵

Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (Count II); trademark infringement under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1) (Count III); unfair competition under the Maine Uniform Deceptive Trade Practices Act, 10 M.R.S.A. §§ 1211-1216 (Count IV); trademark dilution under the Maine Anti-Dilution Statute, 10 M.R.S.A. § 1530 (Count V); and specific performance under the Contribution Agreement (Count VI).

⁴ I do not read the First Circuit’s opinion as requiring distinct analysis on the merits of each of the five trademark claims at this stage, particularly given that such further analysis would not affect the scope of the preliminary injunction.

⁵ Although this Order at times refers to the “Plaintiffs” generally, the distinct individual Plaintiffs have different legal identities and different sets of rights. On the present record, it appears that Plaintiff JL Powell LLC owns the rights described in Section 7.1(b) of the Contribution Agreement, while Plaintiff JL Powell Clothing LLC owns the rights to the trademark “J.L. Powell.” See PI Order 22; Pls.’ Ex. 45. As described below, both Plaintiffs have established a right to injunctive relief.

LEGAL STANDARD

A party moving for a preliminary injunction under Federal Rule of Civil Procedure 65 must “‘establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.’” *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir. 2011) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

DISCUSSION

I. Evidentiary Background

I rely on the following factual background taken from the record as it has been developed at the preliminary injunction stage of this suit. The recitation of the facts below is abbreviated; a full rendering of the facts is available in the PI Order.

Plaintiff JL Powell LLC owns the contractual rights described in Section 7.1(b) of the Contribution Agreement—one of two documents executed to bring JL Powell LLC into existence. In essence, under Section 7.1(b), Powell granted to JL Powell LLC the exclusive right to use his name and endorsement, and Powell agreed not to use his name or allow others to use his name in connection with any business competitive with JL Powell LLC or any of its affiliates.⁶

Plaintiff JL Powell Clothing LLC owns the federally registered trademark “J.L.

⁶ JL Powell LLC later assigned all of its assets to a group of investors called Blue Highways III LLC (“**Blue Highways**”), and Blue Highways then contributed those assets to a new entity, JL Powell Clothing LLC. Because the rights under Section 7.1(b) were not assignable, I previously found that it was likely that those rights still belonged to JL Powell LLC, which was still a corporation in good standing in Delaware. *See* PI Order at 21-22.

Powell.” *See* Pls.’ Ex. 45.⁷ The mark has been in use since 2006 in connection with sales and marketing to customers throughout the United States. Apr. 25, 2013 Decl. of Bruce A. Willard ¶ 17 (“**Willard Decl.**”) (ECF No. 3-1). “The mark consists of standard characters without claim to any particular font style, size, or color.” Pls.’ Ex. 45. The trademark registration issued on January 11, 2011 and covers belts, coats, footwear, gloves, hats, jackets, pants, scarves, shirts, shorts, sleepwear, sweaters, swimwear, ties, and underwear in International Class 25. Pls.’ Ex. 45. Powell consented to the registration of his name as a trademark. Pls.’ Ex. 45.

The Plaintiffs have offered evidence that the J.L. Powell brand is based on Powell’s identity. Bruce A. Willard, Chairman of the Board of Directors of JL Powell Clothing LLC (“**Willard**”), described Powell’s former company, JL Powell Inc. (“**JLP**”) as follows:

The company’s stock in trade was in its line of high end goods for the sporting life. To market these products, Josh Powell had “mythologized” an image of himself, building a brand around this identity. He had successfully cultivated an image of a catalog company that focused on a character based on his personal lifestyle. In effect, he was his own avatar—a fictional version of the real Joshua L. Powell. . . . The catalog also offered personal messages from Josh Powell to its customers, many of which were followed by his signature. In fact, Josh wrote most of the copy in the JL Powell catalog and it was based on his first-person perspective.

Willard Decl. ¶ 4. Issues of the J.L. Powell catalog support Willard’s description of the J.L. Powell brand. For example, one issue features a “Why We Do This” message signed by Powell linking his adventurous lifestyle to the items for sale in the catalog,

⁷ The Plaintiffs’ exhibits were admitted in hard copy into evidence at the June 13, 2013 hearing on the Plaintiffs’ motion for preliminary injunction. *See* Ct. Ex. List (ECF No. 53).

reading in part: “we travel the globe, to places where there is scant concern about increasing productivity and artisans who have no interest in assembly line efficiency.” Pls.’ Ex. 3. Willard testified that part of what attracted him to the J.L. Powell brand was the “pattern of endorsement of curatorship and of the process of collecting the product and presenting it” Tr. of Hr’g on Mot. for Prelim. Inj. 192:19-21 (“**Hr’g Tr.**”) (ECF No. 55). The evidence demonstrates that Powell’s “persona” was central to the J.L. Powell brand.

With respect to a target audience, Willard testified that the J.L. Powell catalogs had a “unique and alluring quality of capturing a sense of adventure, a sense of outdoor spirit for an American male customer who’s looking for . . . escape into the outdoors and a collection of products that were appealing, carefully selected, and had this unique mix of high-quality, well-made characteristics.” Hr’g Tr. 128:2-6.

The JL Powell catalog and The Field catalog are very similar, although The Field contains some clothing for women. For example, summer issues of both catalogs advertise chinos using a two-page photograph of a man reclining in a natural setting in a casual collared shirt and chinos with a book and glasses (in the JL Powell catalog, it appears to be Powell himself reclining on a deck by the ocean, reading a book, glasses on; in The Field, a model reclines on an armchair in a field with a book titled “Fine Wines,” glasses in hand, gazing off into the distance). Both pairs of chinos are priced at over \$100 (JL Powell: \$138; The Field: \$198). And both catalogs reference famous World War II generals in their product descriptions for the pants (JL Powell:

General Douglas MacArthur; The Field: General George S. Patton). *Compare* Pls.’ Ex. 41, at 48-49, *with* Pls.’ Ex. 48, at 52-53.

The Field, Powell’s current venture, has used Powell’s name and endorsement to promote its products. In fact, Powell’s name appeared on the cover of the first two issues of The Field, *see* Pls.’ Exs. 48, 50, as shown below from the second issue:



With respect to placement, the term “J. Powell” appears in the top third of the cover, below the title of the catalog. *See* Pls.’ Exs. 48, 50. The font size for “J. Powell” is smaller than the catalog title, but larger than the descriptive words lining either the top or bottom of the cover. *See* Pls.’ Exs. 48, 50.

The inside cover of these first two issues has a note from Powell (identified as the “Purveyor”), including the following statement: “I have designed and curated The Field’s first collection of products, inspired by everything from chasing pheasants across the rolling fields of Dutchess County to finding the best truffle dish and espresso on Paris’ left bank.” Pls.’ Exs. 48, 50. Each of these issues includes a “Dispatch” from “J. Powell,” titled “In the Salt,” where he gives a first-person

accounting of a fishing trip. *See* Pls.’ Exs. 48, 50. The first two issues link Powell’s persona, name, and endorsement to The Field.⁸

The Field catalog has been mailed to J.L. Powell catalog customers. Willard Decl. ¶ 28; June 11, 2013 Decl. of Peter W. Culley ¶ 2-4 (ECF No. 50-1). There are two e-mails in the record from J.L. Powell customers evidencing confusion about the connection between the J.L. Powell catalog and The Field. *See* Pls.’ Exs. 57, 58. In one of these e-mails, a customer complains to the J.L. Powell catalog about errors in The Field catalog. Pls.’ Ex. 57.

II. Support for a Preliminary Injunction under the Trademark Infringement Claim

A. Likelihood of Success on the Merits

The Plaintiffs argue that the Defendant’s references to “J. Powell” and “Josh Powell” in The Field and on The Field’s website violate their registered trademark “J.L. Powell.” Pls.’ Mot. for TRO and Prelim. Inj. 12 (ECF No. 3). The Defendant does not contest that JL Powell Clothing LLC holds the registered trademark “J.L. Powell,” or that it is a mark which merits protection, but he argues that Powell’s use of his own name is not likely to cause confusion and is protected under the fair use doctrine.⁹ Def.’s Opp’n to Pl.’s Mot. for TRO and Prelim. Inj. 10-13, 15-18 (ECF No.

⁸ I also found it likely that Powell permitted one of The Field’s suppliers, Rancourt & Co., to use his name in a blog post about The Field. Pl Order 28. The post, which was linked on The Field’s blog, included the following statement: “The Field is a new catalog and ecommerce outfitter specializing in high end goods for the sporting life. We are happy to be part of this new venture from Josh Powell, the man behind the JL Powell company.” Pls.’ Ex. 54.

⁹ The Defendant also argues that the “J.L. Powell” trademark registration does not cover “catalog services or publications of any sort.” Def.’s Opp’n to Pl.’s Mot. for TRO and Prelim. Inj. 9. But the Lanham Act broadly prohibits “use in commerce [of] any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion,

36).

1. The Governing Law

To establish a likelihood of success on the merits, the Plaintiffs must demonstrate both that their mark merits protection and that the allegedly infringing use is likely to result in customer confusion. *Borinquen Biscuit Corp. v. M.V. Trading Corp.*, 443 F.3d 112, 116 (1st Cir. 2006).

To determine whether a likelihood of confusion exists in a particular case, courts in the First Circuit apply the *Pignons* factors: “(1) the similarity of the marks; (2) the similarity of the goods . . . ; (3) the relationship between the parties’ channels of trade; (4) the juxtaposition of their advertising; (5) the classes of prospective purchasers; (6) the evidence of actual confusion; (7) the defendant’s intent in adopting its allegedly infringing mark; and (8) the strength of the plaintiff’s mark.” *Dorpan, S.L. v. Hotel Melia, Inc.*, 728 F.3d 55, 65 (1st Cir. 2013) (quoting *Int’l Ass’n of Machinists & Aerospace Workers, AFL-CIO v. Winship Green Nursing Ctr.*, 103 F.3d 196, 201 (1st Cir. 1996)). No one factor is determinative. See *Pignons S.A. de Mecanique de Precision v. Polaroid Corp.*, 657 F.2d 482, 487 (1st Cir. 1981).

The Lanham Act provides a “fair use” defense for a would-be infringer’s use of a mark where

the use of the name, term, or device charged to be an infringement is a use, otherwise than as a mark, of the party’s individual name in his own business . . . or of a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of such party, or

or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1)(a). The Defendant has not pointed to any authority suggesting that the scope of the trademark should be so narrowly construed.

their geographic origin

15 U.S.C. § 1115(b)(4). Because fair use is an affirmative defense, *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 543 U.S. 111, 114 (2004), the defendant bears the burden of establishing it. See *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 429 (2006) (“[T]he burdens at the preliminary injunction stage track the burdens at trial.”).

2. Applying the Law to the Facts

Under the *Pignons* factors, the Plaintiffs have a strong case for establishing a likelihood of confusion. Pursuant to the first factor, “J. Powell” and “Josh Powell” are extremely similar to the mark “J.L. Powell.” To state the obvious, the former use only drops one letter from the mark, and the latter use drops the second initial and expands the “J” to “Josh.” Likewise, the second, third, fourth and fifth factors—similarity of the goods, the relationship of the parties’ channels of trade and advertising, and the class of customers—support a finding of confusion. Both JL Powell and The Field sell high-end men’s sports apparel and gifts; both compete in the catalog and e-commerce channels; both advertise to customers who wish to buy expensive, well-made, artisanal products; and both market to men who either live, or wish to project that they live, a life marked by global travel, enjoyment of fine wine and liquor, and boating, fishing, and hunting in exotic destinations. The guts of these catalogs are for all intents and purposes interchangeable—if you opened to page four of either you would be hard pressed to know whether you were reading The Field or J.L. Powell. As for the sixth factor, despite the fact that at the time of the evidentiary hearing only two issues of The Field had been released, there was already some

evidence of customer confusion. With respect to the defendant's intent in using the mark, the seventh factor, Powell is not an innocent junior user trying to go into the catalog business with the bad luck of having the same name as J.L. Powell. He started a business based on his own personal brand, attracted investors to the business, and sold the business to those investors along with the exclusive right to use his name and endorsement for commercial purposes. Finally, as to the eighth factor, the mark is strong—it is registered, has been in use since 2006, and reaches a national audience.

Powell has not shown that his use of “J. Powell” and “Josh Powell” in connection with The Field qualifies as fair use. First, Powell explicitly waived his right to assert a fair use defense for using his name in connection with any competitor of JL Powell LLC or its affiliates. Contribution Agreement § 7.1(b). Even if that promise in the Contribution Agreement somehow does not apply to the Plaintiffs' trademark claims, Powell has not demonstrated that he used the J.L. Powell trademark descriptively, other than “as a mark,” and in good faith. *See Car-Freshner Corp. v. S.C. Johnson Son, Inc.*, 70 F.3d 267, 269 (2d Cir. 1995). The use of a mark is deemed descriptive where it is used to describe goods being sold. *Cosmetically Sealed Indus., Inc. v. Chesebrough-Pond's USA Co.*, 125 F.3d 28, 30 (2d Cir. 1997). The use of a term “as a mark” generally occurs when it is used to attract public attention. *JA Apparel Corp. v. Abboud*, 682 F. Supp. 2d 294, 310 (S.D.N.Y. 2010). Evidence of an “intent to confuse” often indicates bad faith. *Id.* at 311.

Although Powell argues that his name was used descriptively to identify him

as the author of content within The Field, the term's placement suggests that it was used "as a mark" to attract attention from the public. Powell's use of his name on the cover is likely to create confusion as to the connection between The Field and J.L. Powell catalogs. What is more, Powell's signed message on the inside cover of each of the first two issues of The Field imitates the founder's message on the inside cover of the J.L. Powell catalogs. *See, e.g.*, Pls.' Ex. 40. The use of "J. Powell" and "Josh Powell" in The Field is confusingly similar to its use in the J.L. Powell catalog. While the application of the fair use defense may ultimately be a close call on a fully developed record, at this point, Powell has not carried his burden in demonstrating that it will likely apply.

B. Irreparable Harm

Existing First Circuit precedent creates a presumption of irreparable harm where the defendant infringes on the trademark of another. *See JL Powell Clothing LLC*, 2014 WL 5410287, at *5; *see also Am. Bd. of Psychiatry & Neurology, Inc. v. Johnson-Powell*, 129 F.3d 1, 3 (1st Cir. 1997); *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc.*, 982 F.2d 633, 640 (1st Cir. 1992) ("[I]rreparable harm flows from an unlawful trademark infringement as a matter of law."). The Supreme Court has called the presumption of irreparable harm into question in a patent case. *See eBay, Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 393 (2006) (rejecting presumption that permanent injunction should issue when patent infringement is established). The First Circuit has noted that the *eBay, Inc.* decision "threaten[s] the continuing viability of [the] presumption" of irreparable harm in trademark cases. *Swarovski Aktiengesellschaft v. Bldg. No. 19, Inc.*, 704 F.3d 44, 54 (1st Cir. 2013). Even if the

presumption no longer applies, various rationales may support a finding of irreparable injury in a trademark infringement case, such as: (1) the difficulty of quantifying the continuing harm caused by trademark infringement, *see Societe Des Produits Nestle*, 982 F.2d at 640; (2) the trademark holder’s “loss of control” over its “reputation and goodwill,” even absent any quantifiable economic harm, *see* 5 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition* § 30:2 (4th ed. 2013); and (3) the impairment of the trademark holder’s marketing of its own products and services, *Mercado-Salinas v. Bart Enter. Int’l, Ltd.*, 671 F.3d 12, 23 (1st Cir. 2011).

If the First Circuit’s presumption of irreparable injury remains in force, then the irreparable injury factor is satisfied by my finding that Powell likely infringed on JL Powell Clothing LLC’s trademark. However, assuming there is no presumption of irreparable harm, I independently find that the Plaintiffs would suffer an irreparable injury absent preliminary injunctive relief. First, Powell’s use of the “J.L. Powell” mark in connection with The Field is likely to confuse customers as to the source of its products and its connection to the J.L. Powell catalog. There is evidence in the record of such confusion, and it would be difficult to calculate the damages caused by customers purchasing items from The Field catalog rather than the J.L. Powell catalog because of Powell’s use of the “J.L. Powell” mark. For example, there could be any number of discrete instances of confusion, each difficult to identify on their own, and even more difficult to quantify in the aggregate. Second, The Field’s use of the “J.L. Powell” mark likely compromises J.L. Powell’s control over the reputation and

goodwill of its brand. For example, there is evidence in the record that a customer complained to J.L. Powell about the sloppy quality of The Field catalog. Third, if The Field continues to use the J.L. Powell mark, the J.L. Powell catalog will have a harder time marketing its products to its customers, as it will be forced to share the goodwill and reputation associated with the J.L. Powell mark. With or without the presumption, there is a likelihood of irreparable harm with respect to the trademark infringement claim.

C. Balance of Equities

The balance of equities tips in the Plaintiffs' favor. In 2010, JL Powell LLC acquired all of JLP's assets, including its intellectual property. Bill of Sale § 1; Contribution Agreement § 4.10(a). Through this transaction, JL Powell LLC validly assumed the rights to the "J.L. Powell" trademark. JL Powell LLC later assigned all of its assets to Blue Highways III LLC, which then contributed those assets to JL Powell Clothing LLC. Plaintiffs have shown that they will suffer a competitive injury and loss of goodwill associated with the "J.L. Powell" trademark absent an injunction. There is no comparative hardship to Powell in preliminarily enjoining him from using a mark, the rights to which his former company expressly gave up in exchange for valuable consideration. The equities favor the Plaintiffs getting the benefit of their bargain.

D. The Public Interest

The public interest is generally served by reducing customer confusion. *Mercado-Salinas*, 671 F.3d at 24; *see also Fritz v. Arthur D. Little, Inc.*, 944 F. Supp. 95, 97 (D. Mass. 1996) ("In . . . trademark cases, the public interest almost always

favors the granting of otherwise appropriate injunctions.”). As discussed above, the use of the J.L. Powell trademark in The Field catalog has already caused customer confusion. J.L. Powell and The Field are both in the business of selling high-end men’s sportswear. They share the same channels of trade and advertising. Given this overlap, it is likely that use of the “J.L. Powell” trademark in The Field would cause further customer confusion. The evidence suggests that a preliminary injunction would reduce customer confusion and thereby serve the public interest. In sum, the Plaintiffs have established their right to a preliminary injunction under their trademark infringement claim.

III. Irreparable Harm under the Contract Claim

I now address whether the record supports a finding of irreparable harm with respect to Plaintiffs’ contract claim. For the reasons given in connection with the trademark claim, I find it likely that The Field’s use of Powell’s name and endorsement to promote its products would confuse J.L. Powell customers about whether and how the two catalogs are related, particularly given how central Powell himself has been to the J.L. Powell brand. I also find it likely that this customer confusion will harm J.L. Powell’s reputation and goodwill. *See Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 21 (1st Cir. 1996) (noting that injury to goodwill and reputation is often irreparable).

It would be impracticable, and perhaps impossible, to calculate the damages caused by Powell’s likely breach of the Contribution Agreement. For example, as I found with respect to the trademark infringement claim, it would be difficult to accurately measure damage caused by potential J.L. Powell customers instead

purchasing items from The Field because of The Field's use of Powell's name and endorsement. *See Ross-Simons of Warwick, Inc.*, 102 F.3d at 19 ("If the plaintiff suffers a substantial injury that is not accurately measurable or adequately compensable by money damages, irreparable harm is a natural sequel.").

Based on the foregoing, I conclude that Plaintiffs have demonstrated that absent injunctive relief, they are likely to suffer irreparable harm in the form of customer confusion and harm to the J.L. Powell brand's goodwill and reputation. In addition, I am persuaded that damages would be exceedingly difficult to ascertain given the facts in this case.

CONCLUSION

For the reasons stated above, I find a sufficient basis for my January 30, 2014 order preliminarily enjoining Defendant Joshua L. Powell. If the parties have been unable to reach consensus regarding the scope and language of that injunctive relief, they should contact the Clerk's Office to schedule a hearing during the first week of December 2014 to resolve the issue.

SO ORDERED.

/s/ Nancy Torresen
United States District Judge

Dated this 24th day of November, 2014